

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MONTRELL HOLMES,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 09-cv-047-DRH
)	
ROGER WALKER, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

HERNDON, Chief Judge:

This action is before the Court to rule on Plaintiff's motion to reconsider dismissing defendants (Doc. 17). Technically, a "Motion to Reconsider" does not exist under the Federal Rules of Civil Procedure. The Seventh Circuit has held, however, that a motion challenging the merits of a district court order will automatically be considered as having been filed pursuant to Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. *See, e.g., Mares v. Busby*, 34 F.3d 533, 535 (7th Cir. 1994); *United States v. Deutsch*, 981 F.2d 299, 300 (7th Cir. 1992). When, as here, the motion is filed within 10 days of the entry of order in question, whether the motion is analyzed under Rule 59(e) or Rule 60(b) depends upon the substance of the motion, not on the timing or label affixed to it. *Borrero v. City of Chicago*, 456 F.3d 698, 701-02 (7th Cir. 2006). When the substance and the label of the post-judgment motion are not in accord, district courts are directed to evaluate it "based on the reasons expressed by the movant." *Obrieht v. Raemisch*, 517 F.3d 489, 493 (7th Cir. 2008) (*quoting Jennings v. Rivers*, 394 F.3d 850, 855 (10th Cir. 2005)).

A motion to alter or amend judgment filed pursuant to Rule 59(e) may only be granted if a

movant shows there was mistake of law or fact or presents newly discovered evidence that could not have been discovered previously. *Matter of Prince*, 85 F.3d 314 (7th Cir. 1996), *reh'g and suggestion for reh'g en banc denied, cert. denied* 117 S.Ct. 608; *Deutsch v. Burlington Northern R. Co.*, 983 F.2d 741 (7th Cir. 1993). In contrast, Rule 60(b) provides for relief from judgment for “mistake, inadvertence, surprise, or excusable neglect.” FED.R.CIV.P. 60(b)(1). After reviewing the instant motion, it is clear that Plaintiff seeks relief under Rule 59(e).

In his motion, Plaintiff argues that the Court should not have dismissed Defendants Hill, Beckman, Brenda Austin, Warden Austin, or Roger Walker. However, upon review of the record, the Court remains persuaded that its ruling dismissing these defendants pursuant to 28 U.S.C. § 1915A was correct. Therefore, the instant motion is **DENIED**.

IT IS SO ORDERED.

DATED: August 10, 2009.

/s/ DavidRHerndon

**CHIEF JUDGE
UNITED STATES DISTRICT COURT**